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MICHAEL POLLACK, also sued as What Key Do You
9 Want It In Music, MCEO, INC., SONY MUSIC
ENTERTAINMENT, SONY MUSIC PUBLISHING (US) LLC,
10 PULSE 2.0, LLC, sued as These Are Pulse Songs, PURE
TONE MUSIC, LLC, sued as Songs With A Pure Tone,
11 CONCORD MUSIC PUBLISHING LLC, BLASTRONAUT,
INC., sued as Droog Publishing, WARNER-TAMERLANE
12 PUBLISHING CORP., AMAZON.COM SERVICES LLC,
APPLE INC., PANDORA MEDIA, LLC, DISNEY PLATFORM
13 DISTRIBUTION, INC., TARGET CORP., BARNES
& NOBLE BOOKSELLERS, INC., TIDAL MUSIC
14 LLC, WALMART INC., WAL-MART.COM USA, INC.,
WIDE EYED GLOBAL, IHEARTMEDIA, INC., and
15 LIVE NATION ENTERTAINMENT, INC.

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 TEMPO MUSIC INVESTMENTS,
20 LLC,

21 Plaintiff,

22 v.

23 MILEY CYRUS, an individual;
GREGORY HEIN, an individual;
24 MICHAEL POLLACK, an individual;
SONY MUSIC PUBLISHING (US)
25 LLC; CONCORD MUSIC
PUBLISHING LLC; WARNER-
26 TAMERLANE PUBLISHING CORP.;
MCEO PUBLISHING; WHAT KEY
27 DO YOU WANT IT IN MUSIC;
SONGS WITH A PURE TONE;
28 (continued next page)

) Case No. 2:24-cv-07910-DDP-BFM

) THE SONGWRITER DEFENDANTS'
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION TO DISMISS

) Date: January 13, 2025
) Time: 10:00 a.m.

) Courtroom of the Honorable
) Dean D. Pregerson
) United States District Judge

1 SONGS BY GREGORY HEIN;
2 DROOG PUBLISHING; THESE ARE
3 PULSE SONGS; WIDE EYED
4 GLOBAL; MCEO, INC.; SONY
5 MUSIC ENTERTAINMENT; APPLE
6 INC.; IHEARTMEDIA, INC.;
7 PANDORA MEDIA, LLC; DEEZER
8 S.A.; AMAZON.COM SERVICES
9 LLC; SOUNDCLOUD GLOBAL
10 LIMITED & CO. KG; TIDAL MUSIC
11 LLC; XANDRIE SA; LIVE NATION
12 ENTERTAINMENT, INC.; TARGET
13 CORP.; WAL-MART.COM USA, LLC;
14 WALMART INC.; BARNES &
15 NOBLE BOOKSELLERS, INC.;
16 DISNEY PLATFORM
17 DISTRIBUTION, INC.; and DOES 1-
18 10, inclusive,

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Defendants.

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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

(a) Summary of Argument

Defendants Miley Cyrus, also sued as MCEO Publishing, Gregory Hein, also sued as Songs By Gregory Hein, Michael Pollack, also sued as What Key Do You Want It In Music, and MCEO, Inc. (the “Songwriter Defendants”) respectfully submit this Memorandum in support of their Motion to Dismiss this action.

Plaintiff Tempo Music Investments, LLC, is not an author or, apparently, even a music publisher. Instead, it is an investment company that acquires songs, and it alleges that it purchased one co-author’s portion of the copyright in a musical composition titled *When I Was Your Man*. Plaintiff brings this copyright infringement action alone—without any of that musical composition’s co-authors or other owners—alleging that the musical composition titled *Flowers* infringes the copyright in *When I Was Your Man*. The Songwriter Defendants categorically deny copying, and the allegedly copied elements are random, scattered, unprotected ideas and musical building blocks. However, Plaintiff’s claim suffers another fatal flaw that mandates dismissal at the pleading stage: the Copyright Act expressly provides that only a legal or beneficial owner of an exclusive copyright right may sue for infringement. 17 U.S.C. § 501(b). Plaintiff is neither and, as a result, it lacks standing to bring this action.

It is well-established in this Circuit that an assignee or licensee of a single co-author’s copyright interest lacks standing because the assignee or licensee does not have the *exclusive* rights that Section 501(b) requires to confer standing; rather, the rights are shared non-exclusively with the other co-authors. That is true even where the assignment or license agreement *purports* to grant exclusive rights because one co-owner only has non-exclusive rights and cannot grant more than he or she has or unilaterally limit the other co-owners’ rights.

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1 Plaintiff's allegations confirm that it acquired only Philip Lawrence's partial
2 interest in the *When I Was Your Man* copyright. And Plaintiff does not allege that Mr.
3 Lawrence's three co-authors assigned any rights in that copyright to Mr. Lawrence or
4 Plaintiff. As a result, Plaintiff's own allegations establish that it is an assignee of non-
5 exclusive rights. Accordingly, as a matter of clearly established Ninth Circuit
6 caselaw, Plaintiff lacks standing to sue for the alleged infringement of the *When I Was*
7 *Your Man* copyright and, since standing is a requirement for Plaintiff's filing of this
8 action, it must be dismissed in its entirety, with prejudice.

9 (b) **Summary of Allegations**¹

10 (1) **Plaintiff Acquires the Copyright Interest of Only One of the**
11 **Four Co-Authors of *When I Was Your Man***

12 *When I Was Your Man* was co-written by Bruno Mars, Philip Lawrence, Ari
13 Levine, and Andrew Wyatt, and recordings of that musical composition were released
14 to the public in January 2013. Compl. (Doc. 1) at 10 ¶ 43;² *see also* Defs' Req. for
15 Judicial Notice ("RJN") at 1, Exs. 1-5 (Copyright Office copyright registration
16 information for *When I Was Your Man*).

17 Plaintiff alleges that it "invests in and owns ... songs and musical compositions
18 by global artists." Compl. at 3 ¶ 11. In or around 2020, Plaintiff allegedly acquired
19 "a portion of the U.S. copyright in all rights, titles, and interests" in the musical
20 composition *When I Was Your Man* via an assignment from "one of the song's co-
21 authors," Mr. Lawrence, and Mr. Lawrence's "publishing entities." Id. at 16 ¶ 66.
22 The Copyright registrations cited in the Complaint confirm that Mr. Lawrence is only
23

24
25 ¹ The following allegations in the Complaint are assumed true for the purposes
26 of this Motion, only.

27 ² This Memorandum contains hyperlinks to cases and other cited materials. Due
28 apparently to the Court's security measures, hyperlinks to internal pages of documents
on PACER may instead lead to the first page of the documents.

one of the four co-authors of *When I Was Your Man*. See *id.* at 10 ¶ 43; Defs’ RJN Exs. 1-5.

(2) *Flowers*

Miley Cyrus, Gregory Hein, and Michael Pollack co-authored the critically acclaimed musical composition titled *Flowers*. Recordings of Ms. Cyrus’ performance of *Flowers* were released to the public in January 2023. Compl. at 1 ¶ 4.

(3) Plaintiff’s Claim in This Action

In September 2024, Plaintiff filed this action against the authors of *Flowers* and twenty-nine other defendants who allegedly publish, distribute, or otherwise exploit *Flowers*. Compl. at 4-9 ¶¶ 12-40. Plaintiff alleges, for example, that *When I Was Your Man* and *Flowers* share a few chords, pitches, an abstract “overall melodic design,” and words, none of which is protected by copyright. And Plaintiff’s transcriptions, even assuming they are correct, show striking differences in melody, chords, other musical elements, and words. *Id.* at 11-15 ¶¶ 49-59.

Plaintiff alleges that it acquired by assignment from Mr. Lawrence and his publishing entities “exclusive rights” in *When I Was Your Man*. And Plaintiff alleges that the defendants infringed Plaintiff’s “exclusive rights” by the “unauthorized reproduction, distribution, and exploitation” of *When I Was Your Man* as supposedly copied in *Flowers*. *Id.* at 2-3 ¶ 7, 17 ¶ 70. As shown below, however, Plaintiff’s admission that it acquired only Mr. Lawrence’s interest in the *When I Was Your Man* copyright confirms that, as a matter of law, Plaintiff’s rights are not exclusive within the meaning of Section 501(b) of the Copyright Act. In short, Plaintiff lacks standing.

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1 **2. PLAINTIFF’S ACTION MUST BE DISMISSED BECAUSE**
2 **PLAINTIFF LACKS STANDING**

3 (a) **The Court May Decide the Issue of Standing on a Rule 12(b)(6)**
4 **Motion**

5 “To survive a [Federal Rule of Civil Procedure 12(b)(6)] motion to dismiss, a
6 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
7 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
8 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “The Court must
9 accept as true all material allegations in the complaint, as well as reasonable inferences
10 to be drawn from them.” eCash Tech. v. Guargliardo, 127 F. Supp. 2d 1069, 1074
11 (C.D. Cal. 2000) (citing Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir. 1998)).
12 However, the Court is “not bound to accept as true a legal conclusion couched as a
13 factual allegation.” Stapley v. Pestalozzi, 733 F.3d 804, 809 (9th Cir. 2013) (quoting
14 Twombly, 550 U.S. at 555). In ruling on a motion to dismiss, the Court also may
15 consider certain materials such as “documents attached to the complaint, documents
16 incorporated by reference in the complaint or matters of judicial notice—without
17 converting the motion to dismiss into a motion for summary judgment.” United States
18 v. Richie, 342 F.3d 903, 908 (9th Cir. 2003).

19 Where, as here, it is apparent from the face of the complaint or other properly
20 considered materials that the plaintiff lacks statutory standing to sue for infringement,
21 the plaintiff’s claim is subject to dismissal pursuant to Rule 12(b)(6). See Sybersound
22 Recs., Inc. v. UAV Corp., 517 F.3d 1137, 1145-46 (9th Cir. 2008) (affirming district
23 court’s Rule 12(b)(6) dismissal of copyright infringement complaint for lack of
24 standing under 17 U.S.C. § 501); Maya v. Centrex Corp., 658 F.3d 1060, 1067 (9th
25 Cir. 2011) (explaining that whereas “lack of Article III standing” requires dismissal
26 under Rule 12(b)(1), “lack of *statutory* standing requires dismissal for failure to state
27 a claim”). It is Plaintiff’s burden to establish standing. DRK Photo v. McGraw Hill
28 Global Educ. Hldgs., LLC, 870 F.3d 978, 986 (9th Cir. 2017).

1 **(b) Plaintiff—as an Assignee of Non-Exclusive Rights—Lacks Standing**
2 **to Sue for the Alleged Copyright Infringement**

3 Plaintiff alleges that an assignment by one of four co-authors of *When I Was*
4 *Your Man* transferred to Plaintiff exclusive rights under that musical composition’s
5 copyright. But Plaintiff’s claim of exclusive rights is a bare legal conclusion that is
6 directly contrary to established caselaw that the assignee of a co-author holds no
7 exclusive rights and, as a result, lacks standing.

8 **(1) Section 501(b) Strictly Limits Copyright Infringement**
9 **Standing to Legal or Beneficial Owners of an Exclusive Right**

10 The Copyright Act defines an “infringer” as “anyone who violates any of the
11 exclusive rights of the copyright owner as provided by sections 106 through 122”
12 17 U.S.C. § 501(a). Broadly defined, those exclusive rights are the “rights of
13 reproduction, adaptation, publication, performance, and display.” *Rodrigue v.*
14 *Rodrigue*, 218 F.3d 432, 435 (5th Cir. 2000) (citing 17 U.S.C. § 106); *Silvers v. Sony*
15 *Pictures Ent., Inc.*, 402 F.3d 881, 883-84 (9th Cir. 2005).

16 As for standing to sue for the alleged violation of those exclusive rights, Section
17 501(b) provides that “[t]he legal or beneficial owner of an exclusive right under a
18 copyright is entitled, subject to the requirements of section 411, to institute an action
19 for any infringement of that particular right committed while he or she is the owner of
20 it.” This designation of who may sue for copyright infringement is exhaustive.
21 *Silvers*, 402 F.3d at 885 (“[U]nder traditional principles of statutory interpretation,
22 Congress’ explicit listing, of who *may sue* for copyright infringement should be
23 understood as an *exclusion of others* from suing for infringement.”).

24 Further, this limitation of standing to owners of exclusive rights was purposeful.
25 Under the predecessor Copyright Act and to avoid multiplicity of suits, there was a
26 judge-made rule that copyrights are indivisible and “must be held in full by a single
27 proprietor and may not be partially assigned.” *Abend v. MCA, Inc.*, 863 F.2d 1465,
28 1469 (9th Cir. 1988), *aff’d sub nom. Stewart v. Abend*, 495 U.S. 207 (1990).

1 The current Copyright Act introduced divisibility, so that “any of the exclusive rights
2 comprised in a copyright” may be transferred. 17 U.S.C. § 101 (definition of “transfer
3 of copyright ownership”). However, Congress, while allowing for “the divisibility of
4 copyright ownership” under the current Copyright Act, also recognized the continuing
5 “need in infringement actions ... to avoid a multiplicity of suits” (H.R. Rep. No. 94-
6 1476, 94th Cong., 2nd Sess. 1976, at 159), and, to do so, limited standing to owners
7 of exclusive rights. 17 U.S.C. § 501(b).

8 **(2) Plaintiff Is Not a Legal Owner of Exclusive Rights in the**
9 ***When I Was Your Man* Copyright**

10 Plaintiff alleges violations of the copyright rights of “reproduction, distribution,
11 public performance, display, and/or creation of a derivative work” of *When I Was*
12 *Your Man*. Compl. at 17 ¶ 70. However, to have standing to prosecute this action,
13 Plaintiff must be the exclusive legal or beneficial owner of the allegedly infringed
14 rights. 17 U.S.C. § 501(b) (“The legal or beneficial owner of an exclusive right under
15 a copyright is entitled ... to institute an action for any infringement of that particular
16 right committed while he or she is the owner of it.”) (emphasis added); *Fahmy v. Jay-*
17 *Z*, 908 F.3d 383, 394 (9th Cir. 2018) (“[plaintiff] must show that he is the legal or
18 beneficial owner of ‘[the] particular right’” that the plaintiff claimed was infringing).
19 As discussed below, Plaintiff is neither.

20 **(i) An Assignee of One Co-Owner’s Interest Is Not a Legal**
21 **Owner of Exclusive Rights**

22 It is established law in this Circuit that the assignee or licensee of one co-
23 author’s interest in a joint work’s copyright does not have standing to sue for
24 infringement of that copyright because it is not an owner of *exclusive* rights. *Tresóna*
25 *Multimedia, LLC v. Burbank High Sch. Vocal Music Ass’n*, 953 F.3d 638, 645-46 (9th
26 *Cir. 2020)*. Thus, in *Tresóna*, the plaintiff sued for infringement of multiple musical
27 composition copyrights, some of which the plaintiff had acquired from the sole owner
28 and others “from an individual co-owner of those interests without the consent of the

1 other co-owners.” *Id.* at 643, 645. While the plaintiff could pursue its claims as to
2 copyrights acquired from the sole owner, it lacked standing to sue as to the others
3 because one assigning co-author cannot transfer exclusive rights. *Id.* at 645-46
4 (“when one co-owner independently attempts to grant an exclusive license of a
5 particular copyright interest, that licensee ... does not have standing to sue alleged
6 third-party infringers”) (quoting *Corbello v. DeVito*, 777 F.3d 1058, 1065 (9th Cir.
7 2015)); *see also Sybersound*, 517 F.3d at 1146 (same as to assignee of one co-owner’s
8 copyright interest); *Amaretto Ranch Breedables v. Ozimals Inc.*, 907 F. Supp. 2d 1080,
9 1083-84 (N.D. Cal. 2012) (same as to assignee of two of three co-authors’ “entire
10 right, title, [and] interest” in copyrighted computer program, “including ... all rights
11 of ... copyright”); *Elohim EPF USA, Inc. v. Total Music Connection, Inc.*, No. CV
12 14-02496-BRO (EX), 2015 WL 12655556, at *15 (C.D. Cal. Oct. 1, 2015) (songwriter
13 agreements by less than all co-authors transferred only non-exclusive licenses that did
14 not provide standing to sue).

15 The reason for this rule is simple. Ownership of a copyrighted work initially
16 vests in the author of the work, and because copyright rights are freely divisible and
17 transferrable, an author may license or assign to third parties any exclusive rights *that*
18 *the author owns*. 17 U.S.C. § 201(a), (d)(2); *Corbello*, 777 F.3d at 1066. However,
19 in the case of joint works, the co-authors are joint owners of the exclusive copyright
20 rights, each owning a non-exclusive interest in the undivided whole. 17 U.S.C. §
21 201(a); *Sybersound*, 517 F.3d at 1145 (“Such co-owners are like tenants in common,
22 each owning a share of the undivided whole.”). As a result, a single co-author of a
23 copyright interest, acting alone, cannot assign or license *exclusive* rights because those
24 rights also are owned by the assignor’s or licensor’s co-authors. *Tresóna*, 953 F.3d at
25 645 (explaining that this rule is based on the “self-evident principle that a joint-owner
26 cannot transfer more than he himself holds”) (quoting *Corbello*, 777 F.3d at 1065).

27 Indeed, without the consent of the other owners, a grant of rights from just one
28 co-owner does not confer standing on the assignee *even if the grant purports to*

1 *transfer exclusive rights*. In that situation, the assignee’s rights are “‘exclusive’ as to
2 the assigning or licensing co-owner, but not as to the other co-owners and their
3 assignees or licensees.” *Id.* (quoting *Corbello*, 777 F.3d at 1065); *see also*
4 *Sybersound*, 517 F.3d at 1146 (“[U]nless all the other co-owners of the copyright
5 joined in granting an exclusive right to [plaintiff], [plaintiff’s assignor], acting solely
6 as a co-owner of the copyright, could grant only a nonexclusive license to [plaintiff]
7 because [plaintiff’s assignor] may not limit the other co-owners’ independent rights
8 to exploit the copyright.”).

9 (ii) **Plaintiff’s Allegations Prove It Owns Only Non-**
10 **Exclusive Rights**

11 Plaintiff’s own allegations confirm that its claim is foreclosed by the rule in
12 *Tresóna* and *Sybersound*. Plaintiff alleges that *When I Was Your Man* is a joint work
13 and that Plaintiff is the assignee of only the interest of Mr. Lawrence and his
14 publishing entities in the jointly-owned copyright. *Compl.* at 10 ¶ 43 (“‘When I Was
15 Your Man’ was written by Bruno Mars, Philip Lawrence, Ari Levine, and Andrew
16 Wyatt”); *id.* at 1 ¶ 3 (Plaintiff “owns a share of the copyright in ‘When I Was Your
17 Man’ through its acquisition of the catalog of songwriter Philip Lawrence, a co-author
18 of the song”), 3 ¶ 11 (“Plaintiff acquired a percentage of the copyright in ‘When I Was
19 Your Man’ through a transaction with one of the song’s co-authors, Philip
20 Lawrence.”), 10 ¶ 45 (“In or around 2020, Plaintiff acquired the copyright interests in
21 ‘When I Was Your Man’ held by Lawrence and his publishing entities.”), 16 ¶ 66
22 (“Plaintiff owns a portion of the U.S. copyright in ... ‘When I Was Your Man’”). The
23 copyright registrations for *When I Was Your Man* likewise confirm that Bruno Mars,
24 Ari Levine, and Andrew Wyatt are also co-authors of *the* musical composition. RJN
25 at 1, Exs. 1-5.

26 At no point does Plaintiff allege that it acquired the interests of Mr. Lawrence’s
27 co-authors, let alone allege that it acquired all of their interests as needed for Plaintiff
28 to be the *exclusive* owner of the allegedly infringed rights of “reproduction,

1 distribution, public performance, display, and/or creation of a derivative work.”
2 Compl. at 17 ¶ 70; compare *Minden Pictures, Inc. v. John Wiley & Sons, Inc.*, 795
3 F.3d 997, 1004 (9th Cir. 2015) (plaintiff had standing because it received the *exclusive*
4 right to serve as licensing agent from the *sole owners* of the copyrights at issue), *with*
5 *Tresóna*, 953 F.3d at 645-46 (distinguishing *Minden Pictures*, following *Sybersound*
6 as binding precedent, and explaining that that *Minden Pictures*’ three-judge panel “did
7 not purport to overrule *Sybersound*” and “could not have ... even if it wanted to”).

8 Plaintiff is therefore the assignee of only non-exclusive copyright rights,
9 notwithstanding Plaintiff’s conclusory legal assertion to the contrary. *See, e.g.*,
10 Compl. at 17 ¶ 70; *Twombly*, 550 U.S. at 555 (courts “are not bound to accept as true
11 a legal conclusion couched as a factual allegation”). This case is accordingly on all
12 fours with *Tresóna* and other cases holding that a licensee or assignee of a single co-
13 owner lacks standing, and Plaintiff’s claim fails as a matter of law. *Tresóna*, 953 F.3d
14 at 645-46; *Sybersound*, 517 F.3d at 1145-46 (assignee of one co-author’s purportedly
15 “exclusive” right to make karaoke versions of nine songs lacked standing to sue; co-
16 author could grant only non-exclusive rights); *Amaretto Ranch*, 907 F. Supp. 2d at
17 1083 (assignee of two of three co-authors’ “entire right, title [and] interest” lacked
18 standing to sue under *Sybersound*); *see above* at 6-8.

19 (3) Plaintiff Is Also Not a Beneficial Owner of Exclusive Rights

20 Plaintiff also cannot establish that it has standing as a “beneficial owner” of
21 exclusive copyright rights. The Ninth Circuit, and its district courts, have repeatedly
22 recognized that a beneficial owner is an author who has assigned his or her legal title
23 to the copyright in exchange for royalties. *Fahmy*, 908 F.3d at 394; *Ray Charles*
24 *Found. v. Robinson*, 795 F.3d 1109, 1115 n.6 (9th Cir. 2015); *Warren v. Fox Family*
25 *Worldwide, Inc.*, 328 F.3d 1136, 1144 (9th Cir. 2003) (employee who created works
26 for hire was not a beneficial owner because employer was author and employee did
27 not transfer copyright in return for royalties); *Silvers*, 402 F.3d at 886; *Fantasy, Inc.*
28 *v. Fogerty*, 654 F. Supp. 1129, 1131-32 (N.D. Cal. 1987) (explaining that a beneficial

owner is one who “has transferred his *exclusive* rights over the copyright’s use in exchange for an economic interest in proceeds derived from that use”) (emphasis added); Premier Tracks, LLC v. Fox Broad. Co., No. 12-CV-01615 DMG (PJWx), 2012 WL 13012714 at *6 (C.D. Cal. Dec. 18, 2012) (interpreting *Warren* as holding that “a beneficial owner can *only* be a former legal owner that assigned his exclusive rights to another in return for royalties.”) (emphasis added).

Here, Plaintiff cannot qualify as a beneficial owner because it is not an author and does not allege that it assigned its copyright rights to *When I Was Your Man* in exchange for royalties. In any event, the Copyright Act limits standing to sue for copyright infringement to the “legal or beneficial owner[s] of *an exclusive* [copyright] right.” 17 U.S.C. § 501(b) (emphasis added). Because Plaintiff is the alleged assignee of only *one* co-author’s interest and, as a result, owns only non-*exclusive* copyright rights, it is not the owner—beneficial or legal—of any exclusive right that could confer standing in this action. *See above* at 5-9; *see also DRK Photo*, 870 F.3d at 988 (non-exclusive licensee was neither legal nor beneficial owner and lacked standing to sue). Plaintiff’s Complaint must therefore be dismissed.

(c) **Leave to Amend Should Be Denied**

The Court should deny leave to amend because no amendment will cure Plaintiff’s lack of standing. *See Chaset v. Fleer/Skybox Int’l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002) (affirming trial court’s denial of leave to amend where plaintiffs could not cure a lack of standing in their pleading); *see also Sybersound*, 517 F.3d at 1142. Plaintiff’s allegations establish that it is the assignee of only one co-author’s copyright interest. Compl. at 1 ¶ 3, 3 ¶ 11, 10 ¶ 43, 10 ¶ 45, 16 ¶ 66; RJN at 1, Exs. 1-5. Because Plaintiff cannot change these facts, it cannot cure its lack of standing and amendment is futile. *See Ahlmeyer v. Nevada Sys. of Higher Educ.*, 555 F.3d 1051, 1055 (9th Cir. 2009) (“futility of amendment alone can justify the denial of a motion [to amend]”) (citing *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)); *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (a district court does not err in denying

1 “leave to amend when any proposed amendment would be futile”). Plaintiff’s
2 Complaint should therefore be dismissed with prejudice.

3 **3. CONCLUSION**

4 Plaintiff unambiguously alleges that it obtained its claimed rights in the *When*
5 *I Was Your Man* copyright from only one of that musical composition’s four co-
6 authors. That is a fatal and incurable defect in Plaintiff’s claim because the Copyright
7 Act expressly provides that only owners of exclusive rights may sue for copyright
8 infringement and this Circuit’s caselaw unambiguously provides that an assignee of
9 only one co-author lacks exclusive rights and, therefore, also lacks standing to sue for
10 infringement. Accordingly, the Songwriter Defendants respectfully submit that their
11 Motion should be granted and Plaintiff’s Complaint and claim for copyright
12 infringement dismissed, in its entirety, without leave to amend.

13
14
15 Dated: November 20, 2024

/s/ Peter Anderson

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MILEY CYRUS, also sued as MCEO
Publishing, GREGORY HEIN, also sued as
Songs By Gregory Hein, MICHAEL
POLLACK, also sued as What Key Do You
Want It In Music, and MCEO, INC.

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for defendants Miley Cyrus, also sued as MCEO Publishing, Gregory Hein, also sued as Songs By Gregory Hein, Michael Pollack, also sued as What Key Do You Want It In Music, and MCEO, Inc., certifies that this Memorandum contains 3457 words, which complies with the word limit of L.R. 11-6.1.

Dated: November 20, 2024

/s/ Peter Anderson
Peter Anderson, Esq.